IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5231 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

KG VASAVA

Appearance:

1. Special Civil Application No. 5231 of 2001

GOVERNMENT PLEADER for Petitioner No. 1-2

MR AS SUPEHIA for Respondent No. 1

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 11/02/2003

ORAL JUDGEMENT

Rule. Mr.Supehia waives service of rule on behalf of respondent. With the consent of the parties matter is

taken up for final hearing.

2. The short facts of the case are that the respondent was initially appointed as a Peon and thereafter as per the say of the respondent there was promotional avenue to the post of Talati-cum-Mantri. Somewhere in the year 1994 select list was prepared for filling up of posts of Talati-cum-Mantri by promotion and the name of the petitioner also came to be included in the said select list. The list was operated from time to time. However, on 7.7.98 statutory rules came to be framed known as "the Village Panchayat Secretary (Cl.III)(Panchayat Service) Recruitment Rules, 1998". The Rules interalia provide for appointment to the post of Village Panchayat Secretary(Cl.III) only by direct selection. Inspite of the provisions of that Rule to fill up the post by direct selection on 5.8.98 the petitioner came to be promoted to the post of Talati-cum-Mantri by way of operating the select list which was prepared for filling up of post by promotion and not by direct selection.

3. When it came to the knowledge of the DDO together with other 7 employees the petitioner came to be reverted from the post of Talati-cum-Mantri to the post of Peon as per order dated 21.6.99. The respondent herein, under the circumstances, preferred appeal being Appeal No.224/99/335 before the Gujarat Civil Services Tribunal, Gandhinagar. The learned tribunal heard the matter and found that the select list remains in operation until all the candidates included in the select list are given appointment and it was recorded by the tribunal that since the Rules are not retrospective the order of reversion is bad and the promotions already given can not be withdrawn or cancelled and therefore the tribunal allowed the appeal by setting aside the order, dated 21.6.99. Under the circumstances, present petition is preferred by the State Govt.

4. The contention raised on behalf of the petitioner State Govt is that once the Rules provided for filling up of the posts by direct selection the post could not have been filled up by promotion and since the promotion was unauthorisedly and illegally given by ignoring the provisions of Rules the order of reversion was passed.

5. On behalf of respondent, Mr.Supehia submitted that the name of the petitioner came to be included as back as in the year 1994 when the select list was prepared and said select list was also approved by the

State Govt. Therefore, he submitted that merely because the appointment was given on a later date would not take away the right of the respondent to have the promotion pursuant to the inclusion of name of the respondent in select list and therefore he supported the order passed by the tribunal.

6. Having considered the above and perusal of the order passed by the tribunal shows that the tribunal has committed error apparent on the face of the record in as much as the tribunal proceeded on the basis that the select list shall remain in operation until the appointment is given to the last candidate included in the select list. In my view the select list would be operative qua and to the extent of availability of posts. If the posts are not available the select list can not be said to be in operation thereafter. In any case, when the select list was prepared at that time posts were to be filled up by promotion. In the year 1997 statutory rules came into force and it is made clear that all the posts would be filled up by direct selection and therefore the scheme to fill up posts by promotion would no longer remain in existence in view of statutory rules coming into force. There is no dispute on the point that the rules have come into force on 7.7.98. Therefore, no post of Talati-cum-Mantri can not be filled up except by way of direct selection as stipulated under the Rules. Under the circumstances, after 5.7.98 when posts are not available for promotion to the post of Talati-cum-Mantri there is no question of operating the select list for giving promotion. The tribunal also has committed error in interpreting the rules in as much as the tribunal proceeded on the basis that the rules are not retrospective. Therefore the promotion given to the petitioner can not be cancelled. In my view even if the rules are treated not retrospective and prospective only then also the fact remains that the petitioner came to be promoted on 5.8.98 i.e. after the Rules came to into force and therefore even if the rules are made prospective in nature, the same would be of no help to the applicant before the tribunal and the respondent herein. It is well settled that merely because the name is included in the select list, it does not create any indefeasible right in favour of candidate whose name is included in the select list and once the mode of selection is changed by framing of rules only by direct selection it is to be read that all the posts which are to be filled up after the rules came into force will by direct selection. Perusal of the order shows that the tribunal has even not properly considered the effect of preparation of select list and right created of a person

whose name is included in the select list.

7. In view of the aforesaid discussion, I am of the view that the tribunal has committed error apparent on the face of record for considering the effect of statutory rules and also effect of operating the select list vis-a-vis availability of posts.

8. In the result, the judgment and order dated 24.1.01 passed by the tribunal in Appeal No.224/1999/335 is quashed and set aside and the appeal before the tribunal shall stand dismissed. Petition is allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs.

11.2.03 (JAYANT PATEL,J)